IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5568 of 1996

with

SPECIAL CIVIL APPLICATION No 5569 & 5571 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

STATE OF GUJARAT

Versus

HEIRS OF DECD. DAHYABHAI KALIDAS

Appearance:

Ms. Pandit, AGP for Petitioners.

MR DV PARIKH for Respondents- purchasers.

Mr. A.M. Parekh for respondents original vendors.

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 28/09/2001

ORAL JUDGEMENT

Heard learned AGP Ms. Pandit for the petitioners in these petitions and Mr. D.V. Parikh, learned advocate for the respondents purchasers and Mr. A.M. Parekh, learned advocate for the respondents original vendors. All these petitions were admitted by this court by issuing rule therein on 23.12.1997. All these petitions raises common question of law and facts and

therefore, with the consent of the learned advocates for the respective parties, they are disposed of by this common judgment.

The Mamlatdar and ALT Gandhinagar started separate inquiries under section 84 C of the Bombay Tenancy and Agricultural Lands Act, 1948 in respect of the transfer of the lands of village Sughad by the respondents in favour of the respondents who are purchasers on the dates shown against them; entries were also certified and the notices under section 84C of the Act were also issued in the year 1985.

Before the Mamlatdar and ALT, the heirs of the deceased purchaser Dahyabhai Kalidas appeared and filed their written statement stating that their father Dahyabhai Kalidas was an agriculturist of Survey No. 302 of Asarva which was ancestral property and the entry was mutated in his name on 7.7.1962. It was further stated by the heirs of the deceased purchaser before the Mamlatdar and ALT that the entries which have been certified were so done after the revenue authorities satisfied themselves that the deceased Dahyabhai Kalidas was an agriculturist. They have further stated that they were the agriculturist. Therefore, they had purchased the suit land and are personally cultivating the same. They have also produced copies of Pahani Patrak, record of right in form no. 6 and 8A to prove that the deceased Dahyabhai Kalidas was holding survey no. 302 of village Asarva in his name. The Mamlatdar and ALT after considering the documentary evidence on record, held that the deceased applicant Dahyabhai Kalidas had committed breach of sec. 2(2), 2(6) and 63 of the Act and, hence, he ordered the suit survey numbers of the five cases to have vested in the State Government. The Mamlatdar had also given an opportunity to the parties to bring the suit survey numbers in their original position within three months from the date of the order and if they failed to act accordingly, the survey numbers were ordered to vest in the State Government. The appeals filed against the said judgment and order in the Court of the Prant Officer were also dismissed and thereafter, revision applications were preferred before the revisional authority namely Gujarat Revenue Tribunal. Revision Applications NO. 442 to 447 of 1988 were filed before the tribunal by the original purchasers which were decided by the tribunal on 23rd March, 1993 and by the said common order dated 23rd March, 1993, the tribunal has allowed the said revision applications. Said order dated 23.3.1993 passed by the tribunal in respect of the five revision applications as aforesaid has been

challenged by the petitioner State in these three petitions in so far as the revision application no. 442, 443 and 446 of 1988 are concerned. It is pertinent to note that the order of the tribunal dated 23.3.1993 has not been challenged in so far as the remaining two revision application no. 445 and 447 of 1988 are concerned.

I have heard learned AGP Ms. Pandit for the petitioner State in these three petitions. Ms. Pandit has submitted that the tribunal has committed error in allowing the revision applications. She has submitted that considering the time factor, the orders passed by the Deputy Collector were set aside by the tribunal. According to her, there was no delay in initiating the proceedings while exercising the powers under section 84-C of the Tenancy Act because in view of the sale deed in favour of the purchasers, necessary entries were made in the revenue record in respect of revision application no. 442 and 443 of 1988 in the year 1984 and notices were issued in the year 1985 and, thus, there was no delay in initiating the proceedings and, therefore, both the authorities below were right in passing the orders and therefore, the interference was not required and the tribunal has erred in considering the question of delay in initiation of the proceedings under sec. 84C of the Tenancy Act.

Learned advocate Mr. Parikh appearing for the original purchasers has submitted that the Tribunal has passed the common order while allowing the revision application no. 23rd March, 1993 in respect of five revision applications. However, the petitioner State has challenged the orders dated 23rd March, 1993 in respect of three revision applications alone and as regards the order passed in respect of the revision application no. 445 of 1988 and 447 of 1988, the petitioner is not challenging the said orders though the order is common applicable to all the revision applications. According to him, the tribunal has passed the common order dated 23.3.1993 in aforesaid revision applications which has been challenged by the petitioner after the period of about three years and such delay in filing of the petition has not been explained in the petition. No averments explaining the delay have been made in the petition and, therefore, the petitions are required to be dismissed on the ground of delay in challenging the order of the tribunal dated 23.3.1993. He has submitted that by common order dated 23.3.1993, the tribunal has allowed five revision applications but the petitioner has accepted the findings given by the tribunal in respect of

the revision application no. 445 of 1988 and 447 of 1988 concerning land survey no. 106/2 and 51 wherein the sale deed is dated 7th July, 1979 in both the cases and date of notice is dated 16th April, 1985 whereunder the proceedings were initiated by the Mamlatdar and ALT while exercising the powers under section 84C of the Tenancy Act. Therefore, according to him, once the State has accepted the findings given by the tribunal in respect of the two matters wherein the date of the sale deed is 7th July, 1979 and wherein the date of notice issued by the Mamlatdar is 16th April, 1985, then, the natural effect of acceptance of such findings by the State would be that the State is accepting the findings as regards remaining matters also which findings were given on technical aspects of the matter considering the delay in initiation of the proceedings after the period of four to five years by the Mamlatdar under section 84C of the Act and the tribunal has held that the initiation of such proceedings after the period of four to five years is not reasonable and on that finding, the orders passed by the Mamlatdar & ALT as well as the Deputy Collector were set aside by the tribunal by allowing the said five revision applications considering two decisions of this Court and therefore, on this ground also, according to Mr. Parikh, the present petitions preferred by the petitioner State after a period of about three years are required to be dismissed.

Mr. Parikh has submitted that there is recent decision of the apex court in case of Mohamad Kavi Mohamad Amin versus Fatmabai Ibrahim reported in (1997) 6 SCC 71, wherein the apex court has considered the suo motu inquiry held by the Mamlatdar while exercising the powers under section 84C of the Act and held that it should be initiated within reasonable period and in that case, sale of land took place in December, 1972 and the suo motu inquiry was initiated in September, 1973 and such delay in initiation of the proceedings has been held to be not reasonable. He has relied upon para 2 of the said judgment.

Mr. Parikh has also submitted that the said order passed by the tribunal dated 23.3.1993 has been challenged by the original vendor who are respondents in the present petitions by filing special civil application no. 7144 of 1993 and 7155 of 1993 and this Court, after considering the facts involved in the matter as well as the contentions raised by the original vendor, has rejected the said petitions by order dated 8th November, 1993 while confirming the view and the order passed by the tribunal. According to him, in view of the orders dated 8th November, 1993 passed by this Court in the

aforesaid two petitions filed by the original vendors, these petitions filed by the State challenging the very same orders of the tribunal should not be entertained and should be rejected because the reasoning given by the tribunal has already been confirmed by this Court while rejecting the said petitions.

Learned AGP Ms. Pandit appearing for the petitioner State has submitted that the proceedings were initiated against the purchaser under section 84-C of the tenancy Act only on the ground of violation of section 2(2), 2(6) and 63 of the Tenancy Act but now, looking to the recent Ordinance issued by the State Government bearing No.5 of 2000 dated 6th November, 2000 and in view of the said Ordinance issued by the State Government, the present petitions are required to be considered.

I have considered the submissions made by the learned advocates for the respective parties. I have also perused the orders passed by the tribunal in aforesaid five revision applications. The tribunal has, in its order, discussed the entire merits as well as the legal contentions raised by the purchaser before it. The tribunal observed that in all cases, sale of the lands bearing different survey numbers were made on 13.2.1980, 7.7.1979 and 7.5.1981 while the notices under section 84C of the Tenancy Act were issued by the Mamlatdar and ALT on 16.4.1985 and 26.4.1985 which would mean that the notices were issued after the period of four to six years. The tribunal also considered the decision of the apex court reported in AIR 1969 SC 1297 and AIR 1981 SC 1771 and has come to the conclusion that the decisions reported in the aforesaid decisions are fully applicable to the facts of the present case. The tribunal found that the notices were issued by the Mamlatdar and ALT after very long period and in view of the said two decisions, notices issued by the Mamlatdar cannot be considered to have been issued within reasonable period and on the basis of such findings, the tribunal held that the purchasers are entitled to get technical advantage of delay in issuance of notices after the period of about four to six years and the tribunal considered that the notices were not issued within reasonable period. Recent decision of the apex court reported in case of Mohamad Kavi [1997 (6) SCC 71] would be relevant in the facts of the present case. Para 2 of the said decision reads as under:

"2. Although Mr. Bhasme, learned counsel appearing for the appellant took a stand that under section 63 of the Act aforesaid, there

should not be any discrimination amongst the agriculturist belongs. But according to him, even without going into that question the impugned order can be set aside on the ground that suo motu power has not been exercised within a reasonable time. Section 84C of the Act does not prescribe any time for initiation of the proceeding. But in view of the settled position by several judgments of this court that whenever such power should be exercised within a reasonable time. In the present case, the transfer took place as early as in the year 1972 and suo motu enquiry was started by the Mamlatdar in September, 1973. If sale deeds are declared to be invalid the appellant is likely to suffer irreparable injury, because he has made investments after the aforesaid purchase. In this connection, on behalf of the appellant, reliance was placed on a judgment of Justice S.B. Majmudar (as he then was in the High court of Gujarat) in State of Gujarat v. Jethmal Bhagwandas Shah disposed of on 1.3.1990, where in connection with Section 84C itself it was said that the power under the aforesaid section should be exercised within a reasonable time. This court in connection with other statutory provisions, in the case of State of Gujarat v. Patil Raghav Natha and in the case of Ram Chand v. Union of India has impressed that where no time limit is prescribed for exercise of a power under a statute it does not mean that it can be exercised at any time; such power has to be exercised within reasonable time. We are satisfied that in the facts and circumstances of the present case, the suo motu power under section 84C of the Act was not exercised by the Mamlatdar within a reasonable time. Accordingly, the appeal is allowed. The impugned orders are set aside. No costs. "

It is also necessary to note one important aspect that the very same order passed by the tribunal on 23.3.1993 was challenged by the original vendors before this Court in special civil application no. 7144 of 1993 and 7155 of 1993 and this Court by order dated 8th November, 1993, rejected the said petitions. While rejecting the said two petitions by order dated 8th November, 1993, this Court has made the following observations :

'The Gujarat Revenue Tribunal while saying that

the proceedings under section 84C of the Act would not have been followed after a lapse of 5 to 6 years, has placed reliance upon the Supreme Court decision in the case of State of Gujarat vs. Raghav Natha, AIR 1969 SC 1297 and in the case of Union of India v. Citedal Fine Pharmaceutical, Madras, AIR 1981 SC p. 1771. Looking to the principles laid down in the above said two pronouncement of the Supreme Court, the Gujarat Revenue tribunal has come to the conclusion that the proceedings under section 84C of the Tenancy Act, 1948 could not have been initiated after a period of 4 to 6 years.

Reverting back to the factual date it appears that in Special Civil Application No. 7144 of 1993, the Registered Sale Deed was executed and sale was effected on 13.2.1980 while the proceedings under section 84C of the Tenancy Act were initiated in the year 1985. In Special Civil application No. 7145 of 1993 also, the sale was made and the Registered Sale Deed was executed on 13.2.1980 while the proceedings under section 84C of the Tenancy Act were initiated in the year 1985. Thus, the factual date as demonstrated in both these petitions would go to show that the proceedings under section 84C of the Tenancy Act, 1948 were initiated after a lapse of 5 to 6 years. This course definitely was not open to the Tenancy Authorities in view of the principles laid down by the Supreme Court in the said two pronouncements which have been followed by this court in very many similarly based petitions. It is, therefore, clear that the Gujarat Revenue Tribunal was perfectly justified in coming to the conclusion that the proceedings under section 84C of the Tenancy Act would not have been initiated after such a long delay on the basis of the delayed notice. The orders pronounced by the Gujarat Revenue Tribunal, which are in conformity with the principles laid down by the Supreme Court in the said two pronouncements, cannot be successfully challenged in the present proceedings. These two petitions therefore fails and they are hereby rejected. Notice in each of the petitions shall stand discharged."

Another aspect of the Ordinance No. 5 of 2000 dated 6th November, 2000 is also required to be considered. Recently, the State Government in its

Revenue Department has issued Ordinance No.5 of 2000 dated 6th November, 2000 and as per section 3 of the said Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Amending Ordinance, 2000, in the amending Act, in section 2, the words "shall be deleted" occurring at two places were substituted by the words "shall be and shall be always to have been deleted". As per section 4 of the Ordinance, 2000, all proceedings relating to any order made or purported to be made under section 84C of the Bombay Tenancy and Agricultural Lands Act, 1948 for contravention of provisions of section 63, so far as it relates to the breach of clause (6) of section 2 of the Principal Act, pending before any court, tribunal or other authority or any such proceedings initiated by any such authority on or after the commencement of the amending Act shall stand abated notwithstanding anything contained in section 84 of the Principal Act. As per the explanation given below the saving clause namely Section 5 of the Amending Ordinance, 2000, for the purpose of this section, the word "final" means no appeal, revision or any other proceeding is pending before any court, tribunal or other authority against any such order on the date of commencement of the amending Act. Thus, the word "final" has also been explained as per the said Explanation. Thus, considering the Amending Ordinance, 2000, the proceedings pending before any court, or tribunal or other authority after the commencement of the amending Act shall stand abated and, therefore, in view of the provisions made under the Amending Ordinance, 2000 also, the present petitions are required to be dismissed as having been abated.

The State Government has issued the Circular on 20th November, 2000 in pursuance to the Amending Ordinance No.5 of 2000 dated 6th November, 2000 and the guidelines have been issued how to implement the Ordinance in respect of the pending cases before the concerned authorities. In para 6 of the said Circular dated 20.11.2000, it has been stated that the Collector will have to withdraw the cases between the agriculturists before the Gujarat Revenue Tribunal/High Court and the procedure in terms of paragraph 4 will have to be followed and the Hon'ble Supreme Court and it has been clarified that the benefit of the said Ordinance will be available only in those cases which have been filed prior to 6.11.2000. It has also been clarified under the said circular in para 6 that likewise, private parties also will have to withdraw the cases pending against the Government before the Gujarat Revenue Tribunal, High Court and the Hon'ble Supreme Court and after withdrawing such cases, will have to make an

application before the Mamlatdar/Mamlatdar & ALT for terminating the proceedings.

In paragraph 5 of the said Circular, the Government has clarified that the cases pending before the Deputy Collector (L.R.)/Deputy Collector/Prant Officer in appeal/revision will be required to be returned to the Mamlatdar/Mamlatdar & ALT within thirty days. After receiving the cases back, the Mamlatdar / Mamlatdar & ALT will have to follow the procedure as prescribed in paragraph 4 of this circular. As regards the cases where orders have been made for closing the inquiry under section 84C for breach of section 2(6) by the Deputy Collector (LR)/Prant Officer, Gujarat Revenue Tribunal/High Court and wherein against such decision, revision/appeal have been preferred by the Government before the Gujarat Revenue Tribunal, High Court/ Hon'ble Supreme Court respectively, the Collector will be required to make an application for withdrawal of the revision/appeal before the concerned court after verifying total holding as per the Agricultural Land Ceiling Act and after such application is granted by the concerned court, the collector will be required to follow the provisions of the Amending Ordinance No.5 of 2000 as regards case relating to breach of section 2(6) prior to 6.4.95 and upon completion of such proceedings, the Collector will have to transmit the whole record to the Mamlatdar/Mamlatdar & ALT and will have to follow the procedure prescribed in para 4. Para 4 provides that the Mamlatdar/Mamlatdar & ALT will be required to obtain farmer certificate from both the parties in such pending cases and orders will be required to be made giving effect of this Ordinance. The Mamlatdar issuing farmer certificate will have to forward copy of farmer certificate to the Mamlatdar of the area where the land was purchased. Para 4 provides that after such orders are made, it will be necessary for them to forward such orders to the concerned Deputy Collector (LR)/Deputy Collector/Prant Officer and the Deputy Collector (LR)/Deputy COllector/Prant Officer will take the orders made by the Mamlatdar/Mamlatdar & ALT into review and will in turn forward the same to the Collector within thirty days. The COllector will take into account such orders and will return back the same to the Mamlatdar/Mamlatdar & ALT. Therefore, in view of the recent Ordinance No.5 of 2000 dated 6th November, 2000 as well as the Circular dated 20th November, 2000 as aforesaid, now, the present petitions filed by the State Government challenging the orders of the Tribunal dated 23.3.1993 are required to be disposed of.

There is yet another aspect to be considered. The tribunal pronounced the orders on 23.3.1993 whereas the State has challenged the said orders by the present petitioner in the year 1996. Delay in preferring the petitions has not been explained by the petitioners. The another aspect to be considered is that the Tribunal has, by passing the orders impugned herein, allowed five revision applications whereas the State has challenged the said orders only in respect of the revision application no. 442 of 1988, 443 of 1988 and 446 of 1988 whereas the state has not challenged the said orders in so far as the revision application No. 445 and 447 of 1988 are concerned. This would mean that the findings given by the tribunal are accepted by the State in respect of the said two revision applications and the findings are not accepted in respect of the said three revision applications. Such an approach of the State would go to show that there is no substance in these petitions. Therefore, on all counts, namely on the ground of delay as well as merits and also in view of the decision given by this Court in the petitions preferred by the original vendors, and also considering the observations made by this court in order dated 8th November, 1993 passed in the aforesaid two special civil applications, as per my opinion, the tribunal was perfectly justified in passing the said orders and there is no substance in the present petitions and are required to be dismissed. No other contentions were raised except referred and discussed as above.

Therefore, for the aforesaid reasons, present petitions are dismissed. Rule in each of the petitions shall stand discharged. There shall be no order as to costs.

28.9.2001. (H.K. Rathod,J.)
Vyas